IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1102 OF 1994.

M/.s J.P. Extruders : Appellant.

versus

Union of India & ors. : Respondents.

Mr.Santosh Shetty h/f Mr.M.M.Vashi for the appellant.

Mr.R.M.Agarwal for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 18th January 2005.

ORAL ORDER.

1. Heard advocates for the appellant and respondents. Appellant before this Court was the original plaintiff. The plaintiff-firm had supplied polythene bags in four consignments dated 8.10.87; 6.11.87; 27.1.88 and 9.3.88. Dispute between the parties is in respect of the

polythene bags supplied in the last consignment. 19150 kgs. of polythene bags were supplied in that consignment. The rate fixed between the parties was Rs.33.30 ps. per kg. The plaintiff-firm was given Rs.29/- per kg. Therefore, the plaintiff-firm filed a suit for recovery of balance amount.

2. The claim and contention of the defendants before the trial Court and before this Court is that the material supplied in the last consignment dated 9.3.1988 were of inferior quality i.e "B" grade. Joint inspection of the bags supplied was taken by the representative of the plaintiff and R.O.F. and other officers of the Government and after the joint inspection, the plaintiff admitted that the polythene bags supplied in the last consignment were of "B" Grade. The plaintiff therefore executed a letter. This letter is at Exhibit 63 duly signed by the plaintiff. In that letter the plaintiff averred as follows :-

> "The joint inspection at the various nursaries sites along with R.F.O. was made and it was found that the Polythene

> bags supplied by us are of B quality. Therefore, we agree to accept the payment of our bills at the rate of B quality received by your department."

This letter ceases the fate of the plaintiff and, rightly therefore the suit was dismissed.

3. Counsel for the appellant tried to contend that as per the defence raised, this letter was obtained from the plaintiff or the plaintiff was required to execute or write this letter under undue influence. A contractor, supplying goods to the Government and writing such a letter cannot be permitted to urge, submit and prove that such a letter could be obtained from him by exerting undue influence. Such a plea firstly was difficult to raise, still difficult to prove. Because it will be necessary for the plaintiff to prove as to who was the officer exerting undue influence; why the plaintiff succumbed to the pressure and why he did not raise objection. Nothing is there on record in the plaint. No proof thereof is tendered. Therefore, no interference is required. Appeal is dismissed.

[D.G.DESHPANDE]

18/01/2005 JUDGE.